

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209156

DATE: November 8, 1982

MATTER OF: Fancy Industries, Inc.

DIGEST:

1. GAO no longer reviews a contracting agency's affirmative determination of responsibility except for reasons not present here.
2. Whether awardee fulfills its contractual obligations is a matter for the contracting agency in the administration of the contract.

Fancy Industries, Inc. (FII), protests an award to Penny Bag under solicitation No. DLA100-82-B-1101, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA). FII argues that Penny Bag lacks the capacity to manufacture the duffle bags called for by the solicitation. More specifically, FII states that the solicitation requires the successful awardee to manufacture 4,500 pieces per day and, since Penny Bag was recently awarded a contract for 120,000 duffle bags, it will not have the manufacturing capacity to meet the additional requirements of this latest solicitation.

We dismiss the protest.

To the extent that FII is challenging DLA's affirmative determination that Penny Bag is a responsible bidder with the capacity to perform the second contract, we note that our Office no longer reviews such determinations unless either fraud is shown on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Aerosonic Corporation, B-193469, 79-1 CPD 35. Neither of these exceptions is present here.

On the other hand, if FII means to argue that Penny Bag will not fulfill its contractual obligations, we note that there is no evidence that Penny Bag qualified its bid in any way. Therefore, Penny Bag is legally bound to comply with all the terms and conditions of the solicitation and whether that firm does in fact fulfill all its contractual

obligations is a matter for the contracting agency in the administration of the contract. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235.

Protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel